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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/883,809 | 06/18/2001 | Wolfgang Steck | ZIP 98 P3024 | 2557 |
| 24131 | 7590 | 06/16/2005 | EXAMINER | |
| LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480 | | | STINSON, FRANKIE L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1746 | |

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,809

Applicant(s)

STECK ET AL.

Examiner

FRANKIE L. STINSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gibson (U. S. Pat. No. 3,051,184).

Re claims 1 and 16, Gibson discloses a dishwasher having a washing compartment (1) and a pump (29) fluidically connected to the washing compartment channeling liquid to the washing compartment, the pump disposed outside the washing compartment and including a pump housing (28) defining an interior and housing a motor (55) and an impeller (37), a heater for heating washing liquid, the heater comprising: a heating device (58) disposed on the pump housing in heat-conducting contact with the interior of the pump housing. Re claim 2, Gibson discloses the heater on the outside of the pump housing. Re claim 5, Gibson discloses the heating device as an electrical resistance heater.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of either Jaworski (U. S. Pat. No. 4,349,434) or Germany'252 (Germany 36 40 252).

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Claims 3 and 17 define over Gibson only in the recitation of the heating device being disposed on the pump housing on the side of the pump facing the motor. This is deemed to be an obvious choice of design in that the position of the heater fails to present any change in the mode of operation of the device. Nonetheless, if desired to relocate the heater, the patents to Jaworski and Germany'252 are each cited disclosing a pump having a housing with a heating device disposed on the pump housing on the side of the pump housing facing the motor. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Gibson, to have the heating device on the pump housing facing the motor for the purpose of providing a more compact arrangement and is considered to be an obvious design choice. (see MPEP 2144.06 C. Rearrangement of Parts: In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). However, "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary

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changes in the reference device.” Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984). Re claim 6, Jaworski discloses the tubular heater.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson.

Claim 8 defines over the Gibson only in the recitation of a bearing part on the pump housing, for bearing the heating device on the housing, being made of stainless steel. Nonetheless, to employ one material over another material (as that material taught by Gibson) is deemed to be an obvious matter of design (see MPEP 2144.06, “SUBSTITUTING EQUIVALENTS KNOWN FOR THE SAME PURPOSE”). This also applies to the subject matter of claims 9.

6. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of Wright (U. S. Pat. No. 4,594,500).

Claims 10-13 define over Gibson only in the recitation of the temperature/pressure/thermostatic switch. Wright discloses the temperature/pressure/thermostatic switch (47). It therefore would have been obvious to one having ordinary skill in the art to modify the pump of Gibson, to include a switch as taught by Wright, for the purpose of controlling the pump and thereby preventing damage to the same.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of Stover et al., Slayter, or UK 2,212,901 (UK'901).

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Claim 14 and 15 define over Gibson only in the recitation of the insulating layer and the protective cover. Stover, Slayter and UK'901 are all cited disclosing heating systems where there is provided a heating element, insulation and a protective cover. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Gibson, to include insulation and a cover as taught by Stover, Slayter or UK'901, for the purpose of preventing injury to the user and/or the dishwasher.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In Moore et al., Japan'093 and EPO 784,151, note the pump/heater means.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (572) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Frankie L. Stinson". The signature is stylized with a large, looped "F" and a cursive "Stinson".

FRANKIE L. STINSON
Primary Examiner
GROUP ART UNIT 1746